IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1203 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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MARIYAMBEN W/O. RASULBHAI A.MEMON - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MEHUL H RATHOD for Petitioner No(s).:
1 - 1.
MR PR ABICHANDANI, AGP or Respondent No(s).: 1,2.
MR DHAVAL M BAROT for Respondent No(s).: 3.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 07/07/2005

ORAL JUDGMENT

Rule. Learned AGP Mr.Abichandani waives service of notice of rule on behalf of respondent Nos.1 & 2 and learned advocate Mr.Barot waives service of notice of rule on behalf of respondent No.3. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 30th June, 2004 passed by the

Additional Secretary (Appeals), Revenue Department, Government of Gujarat. It is the case of the petitioners that their predecessor in title Shri Rasulbhai Amibhai Memon was a party-respondent in the revision application filed by respondent No.3 herein which came to be disposed of by the Additional Secretary by the impugned order. Despite being vitally interested in the proceedings and despite being a party thereto, no notice was ever issued or served to said Shri Rasulbhai. It is, therefore, contended that the order suffers from the defect of hearing not having been given to Shri Rasulbhal, whose legal heirs are the present petitioners. Learned AGP from the record is unable to controvert this factual aspect of the mater. On behalf of respondent No.3 also, no material is produced to disbelieve the version of the petitioners stated on affidavit. It is, therefore, concluded that Shri Rasulbhai though a party before the Additional Secretary and otherwise also vitally interested in the litigation was never heard before the impugned order came to be passed by the Additional Secretary.

3. On this short ground alone, the impugned order dated 30th June 2004 is set aside and the proceedings are remanded back to the Additional Secretary for fresh hearing and disposal. It is being pointed out by the

learned AGP that earlier some proceedings in connection with the land in question had travelled upto this Court and Special Civil Application No.8670 of 1995 came to be disposed of by an order dated 9.11.95. It will be open for the parties to bring this aspect of the matter to the notice of the Additional Secretary who will, I am sure, take the same into consideration. During the pendency of the petition, both the sides were directed to maintain status quo. This position will continue till the proceedings are disposed of by the Additional Secretary. With these directions and observations, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)